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DUNN

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Opposition No. 91125743
Opposition No. 91152104
Cancellation No. 92041147

THE SERVICEMASTER COMPANY

v.

UGI HAVC ENTERPRISES, INC.

Elizabeth A. Dunn, Attorney:

This case comes before the Board on the following motions:

- i. Applicant/respondent UGI HAVC ENTERPRISES, INC.'s (hereafter, applicant) motion to compel discovery responses, filed November 3, 2004; and
- ii. Opposer/petitioner THE SERVICEMASTER COMPANY's (hereafter, opposer) motion for protective order to prevent the discovery deposition of Ed Dunn, filed December 16, 2004.¹

Both motions have been fully briefed.

The Board notes that the pleadings have been amended to delete the dilution claim, and now claim likelihood of confusion between applicant's marks and opposer's previously registered and common law marks; and that the parties agreed to an additional two months of discovery, to run from the date of the

¹ The delay in acting upon this matter is regretted.

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Board's ruling on the motions. The parties' marks are set forth below.

THE SERVICEMASTER COMPANY	UGI HAVC ENTERPRISES, INC.
<p>Registration No. 1220269 SERVICEMASTER</p> <p>hospital and pharmacy management services with respect to purchasing and stock control repair and maintenance of buildings and equipment such as electrical, plumbing, heating and air conditioning</p>	<p>Application Serial No. 76237328 SERVICEMARK HEATING COOLING PLUMBING and design</p> <p>retail services featuring heating, ventilation, cooling and appliances, and plumbing and related equipment installation, repair, and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair, and maintenance of plumbing and related equipment</p>
<p>Registration No. 1272228 SERVICEMASTER</p> <p>energy conservation management services provided to institutional facilities</p>	<p>Application Serial No. 76166568 SERVICEMARK</p> <p>distributorship featuring heating, ventilation, cooling and appliances, and plumbing and related equipment installation, repair, and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair, and maintenance of plumbing and related equipment</p>
<p>Common law use SERVICEMASTER</p> <p>other and various related services including but not limited to plumbing, HVAC, electrical, drain rooting and cleaning services and sales to residential and commercial customers and extended warranties for major home systems and appliances to residential customers</p>	<p>Registration No. 2591190 SERVICEMARK HEATING COOLING PLUMBING and design</p> <p>retail services featuring heating, ventilating, cooling and appliances, and plumbing and related equipment installation, repair, and maintenance of heating, ventilation and cooling equipment and appliances; installation, repair, and maintenance of plumbing and related equipment</p>

APPLICANT'S MOTION TO COMPEL

Preliminarily, the Board notes that applicant's motion was timely filed and complies with the requirements of Trademark Rule 2.120(e) insofar as it includes copies of the discovery requests and responses at issue as well as a statement of applicant's good faith effort to resolve these issues. The Board notes that the parties agree that, with the amendment of the pleadings to delete the dilution claim, Document Request No. 18 is no longer at issue.

Applicant generally contends that opposer has failed to provide requested information regarding opposer's use and the use by its related companies of the mark SERVICEMASTER in connection with HVAC and plumbing services. Opposer generally contends that applicant has received the information sought, except with regard to irrelevant or overly burdensome requests. Insofar as applicant's motion to compel is granted below with respect to specific discovery requests, the parties are advised that if proper discoverable matter is withheld from the requesting party, the responding party will be precluded from relying on such information and from adducing testimony with regard thereto during its testimony period. *See Shoe Factory Supplies Co. v. Thermal Engineering Company*, 207 USPQ 517 (TTAB 1980); and *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895 (TTAB 1988).

With regard to the specific discovery responses, the Board finds as follows:

Interrogatory No. 11 (First set)

Identify and describe any and all packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints, and any other goods or materials bearing the SERVICEMASTER marks or used in connection with the SERVICEMASTER marks.

Response:

Opposer objects to Interrogatory No. 11 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "any and all packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing the SERVICEMASTER marks..." Subject to said objection and without waiver thereof, Opposer will produce a representative sampling of such documents as are not immune, privileged or otherwise protected from discovery.

Because opposer pleads common law use of SERVICEMASTER in connection with HVAC and plumbing services, as well as its pleaded registrations, how and when opposer and related companies use the mark in connection with those services is squarely at issue in this proceeding. Applicant's motion to compel states that, in an effort to facilitate discovery, applicant agreed to accept a subset of information related to use of the mark in connection with HVAC and plumbing services. In these circumstances, the Board finds that opposer's response vaguely promising a future "representative sample" is insufficient.

Representative samples of requested discovery documents are permitted only if the number of documents involved is such that

it would place an undue burden on the responding party to provide every requested document. *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718 (TTAB 1987). Moreover, the response that a "representative sample" of requested discovery documents has been or will be provided is sufficient to meet a party's discovery obligations only so long as the responding party demonstrates that the sample is not selective or aberrational but adequately representative. See *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147 (TTAB 1985) ("if it is reasonably possible to provide a copy of each item requested, applicant should do so. However, to the extent it is overly burdensome, applicant may provide representative samples from the calendar quarters involved."); *Procter & Gamble Co. v. Keystone Automotive Warehouse, Inc.*, 191 USPQ 468 (TTAB 1976) (production of representative samples of invoices, labels and advertising are sufficient in response to a request for "all" such documents where no showing that the samples are not truly representative); *The J. B. Williams Company, Inc. v. Pepsodent G.m.b.H.*, 188 USPQ 577 (TTAB 1975) ("opposer should attempt to identify a reasonably representative sample thereof by category"). Here, there is no showing that opposer identified all responsive documents so that applicant could confirm that complete production would be burdensome and no showing that opposer identified the representative sample in a

way that applicant could confirm that the information provided was representative.

Applicant's motion to compel is granted with respect to Interrogatory No. 11 (First set). Opposer is allowed thirty days from the mailing date of this order to, without objection 1) produce all responsive information or 3) provide a representative sample of the responsive information and enough information about the sample for applicant to determine if it is representative.

Interrogatory No. 2 (Second Set)

State the full address of each location in the U.S. at which Opposer has maintained, or now maintains, an office or other place of business with respect to the provision of any residential HVAC and/or plumbing services and/or related goods, and for each location state:

a) the date(s) on which business commenced and, if applicable, terminated, as to each service and/or offer for sale of goods;

b) the particular service(s) and/or particular good(s) on or in connection with which Opposer's Mark has been used, and the periods of time during which Opposer's Mark was used on or in connection with each particular service and/or good;

c) the particular color(s) in connection with which Opposer's Mark has been used, and the periods of time during which Opposer has used such color(s) in connection with Opposer's Mark;

d) the Mark(s) (other than Opposer's Mark) used on or in connection with the services and goods, indicating as to each the particular service and/or good on or in connection with which the Mark has been used, and the periods of time during which the Mark was used on or in connection with the particular service and/or good.

Response:

Opposer objects to this interrogatory, including all of its sub-parts, to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue

therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory 2(a), (b) (First Set) and to the following SERVICEMASTER plumbing services locations:

ServiceMaster Plumbing Services
3051 Ash Park Loop
Winter Park, Florida 32792

ServiceMaster Plumbing Services
3500 Aloma Avenue, Suite D-24
Orlando, Florida 32792

Interrogatory No. 3

Same as No. 2, except directed to Opposer's commercial (as opposed to residential) HVAC and/or plumbing services and/or related goods

Response:

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory 2(a), (b) (First Set).

Interrogatory No. 4

Same as No. 2 except directed to Opposer's "related parties" offering residential services

Response:

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory, including all of its sub-parts, to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Opposer objects to this interrogatory, including all of its sub-parts, as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 5

Same as No. 2 except directed to Opposer's "related parties" offering commercial services

Response:

Opposer objects to this interrogatory, including all of its sub-parts, as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory, including all of its sub-parts, to the extent that it is beyond the scope of the pleadings as it is not limited to the marks or products at issue therein, and as such this interrogatory is irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

As noted above, applicant's business is the sale and installation of HVAC and plumbing equipment. The information that a party sells the same goods or services as the propounding party, even if under a different mark, is relevant to the issue of likelihood of confusion. See *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (questions concerning specific goods on which opposer uses mark are proper to extent scope of inquiry is limited to those goods identified in application, or involve goods of type marketed by applicant, or mentioned by opposer during discovery); TBMP §414 (2d ed. rev. 2004). In addition, questions regarding dates of use are relevant not just to the issue of priority but to the issue of likelihood of confusion. See *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A.1973) ("In testing for likelihood of confusion under Sec. 2(d), therefore, the following, when of record, must be considered ... The fame of the prior mark [sales, advertising, length of use], ... The nature and extent of any actual confusion ... The length of time during and conditions under which there has been concurrent use without evidence of actual confusion"). Finally we note that, as shown by the pleadings (paragraphs 2 and 3), opposer relies on use of its marks by related parties. Accordingly, we find that applicant's Interrogatories No. 2-5 are relevant, within the scope of discovery, and not burdensome.

Applicant's motion to compel is granted with respect to Interrogatory Nos. 2-5 (First set). Opposer is allowed thirty days from the mailing date of this order to produce all responsive information without objection.

Interrogatory No. 7

State any policy (written or unwritten) and identify and locate any document concerning any and all uses of each of the Marks (other than Opposer's Marks) used on or in connection with the provision of any HVAC and/or plumbing services and/or related product by, for, or on behalf of, Opposer and any Related Party.

Response:

Opposer objects to this interrogatory, including all of its sub-parts, as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

As Opposer's registered marks are incontestable, priority is not in issue. Consequently, Opposer objects to the dates of use requested in this interrogatory as irrelevant to the claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the forgoing objections, Opposer refers to its Answer to Interrogatory 2(a), (b) (First Set) and to www.amsfusa.com/locations.

As noted earlier, information regarding how opposer and related parties use the SERVICEMASTER mark, and information regarding HVAC and plumbing services, is integral to the issues to be determined in this proceeding. While prior interrogatories requested descriptions of how the mark is used and information regarding use at specific locales, this interrogatory plainly seeks all other documents relating to use of the mark, including policy memoranda. If such information

does not exist, opposer should so state. If it does exist, it should be produced. If production would be burdensome, opposer may respond with a detailed description of the responsive information and a representative sample, bearing in mind the earlier discussion regarding a sample that is representative.

Applicant's motion to compel is granted with respect to Interrogatory No. 7. Opposer is allowed thirty days from the mailing date of this order to produce all responsive information without objection.

Interrogatory No. 12

Identify with specificity the marketing methods used and/or intended to be used in advertising associated with the provision of HVAC and/or plumbing services and/or related goods by or for Opposer under Opposer's Mark, or any other mark owned or used by Opposer, including, without limitation, the names of newspapers, magazines, trade journals or periodicals in which Opposer has advertised and/or intends to advertise Opposer's Mark, or any other mark owned or used by Opposer.

Response:

Opposer objects to this interrogatory as overly broad, unduly burdensome and harassing. To the extent not otherwise objected to, Opposer will provide only that information in its possession which is sufficient to meet the needs of the interrogatory.

Opposer objects to this interrogatory as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing objection, Opposer refers to its Answer to Interrogatory Nos. 8 and 18 (First Set).

We find the interrogatory is tailored to obtaining information on opposer's marketing of HVAC and plumbing services such as those offered by the applicant, and such information is

relevant to the issue of likelihood of confusion. We see no burden in producing the requested description of marketing plans accompanied by a description of media outlets.

Applicant's motion to compel is granted with respect to Interrogatory No. 12. Opposer is allowed thirty days from the mailing date of this order to produce all responsive information without objection.

Interrogatory No. 6 (Second set)

Identify all inquiries, investigations, surveys, evaluations, polls and/or studies conducted by Opposer or by anyone acting for or on its behalf that refer or relate in any manner to Opposer's Mark, indicating as to each the date conducted, the name, address and title of each Person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to such inquiry, investigation, survey, evaluation, poll, or study.

Response:

Opposer objects to this interrogatory to the extent that it calls for the production of attorney-client communications or materials subject to attorney work-product doctrine. Such information will not be provided.

Subject to the foregoing objection, Opposer states that it is aware of no such studies conducted by Opposer.

Opposer cannot produce what does not exist. Of course, opposer was and remains obligated to make a reasonable investigation to determine whether the requested information exists, and has a continuing obligation to supplement its responses if requested information thereafter is discovered.

Applicant's motion to compel is denied with respect to Interrogatory No. 6.

Document Request No. 4 (First Set)

Produce all documents and things concerning any plans, schedules or program for marketing, advertising, or promoting any goods or services offered for sale or sold, or intended to be offered or sold, under the SERVICEMASTER marks.

Response:

Opposer objects to Document Request No.4 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things concerning any plans, schedules, or program for marketing, advertising, or promoting any goods or service offered for sale or sold, or intended to be offered for sale or sold, under the SERVICEMASTER marks." Opposer also objects to Document Request No. 4 on the grounds and to the extent that seeks confidential business information. However, upon entry of the stipulated protective order, Opposer will provide a representative sampling of such requested information as is not immune privileged or otherwise protected from discovery.

Document Request No. 7

Produce all documents and things that identify the persons who purchase, or to whom are offered for purchase, any goods or services under the SERVICEMASTER marks.

Response:

Opposer objects to Document Request No. 7 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things that identify the persons who purchase, or to who are offered for purchase, any goods or services under the SERVICEMASTER marks." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

Document Request No. 8

Produce all documents concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto.

Response:

Opposer objects to Document Request No. 8 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents concerning any communications that Opposer had (whether orally or in writing) with any other person or persons regarding the SERVICEMASTER

marks or another party's right to use these marks, or any mark the Opposer considered as or alleged to be confusingly similar thereto." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of enforcement communications.

Document Request No. 14

Produce all documents and things which support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks.

Response:

Opposer objects to Document Request No. 14 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents and things which support Opposer's assertions that the public is likely to be confused, mistaken, or deceived thereby, by the coexistence of the Applicant's marks and Opposer's marks." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

Document Request No. 17

Produce all documents which support Opposer's assertions that the SERVICEMASTER mark has achieved the status of a famous mark.

Response:

Opposer objects to Document Request No. 17 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all documents which support Opposer's assertions that the SERVICEMASTER mark has achieved the status of a famous mark." Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

Document Request No. 19

Produce all other documents and things which Opposer contends supports any element of its Notice of Opposition.

Response:

Opposer objects to Document Request No. 19 on the grounds that it is overly broad and unduly burdensome, time-consuming and expensive in that it seeks "all other documents and things which Opposer contends supports any element of its Notice of Opposition." Opposer further objects to Document Request No. 19 on the ground and to the extent it seeks material which is

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protected by the attorney-client and attorney work product privileges. Subject to said objection and without waiver thereof, Opposer produces a representative sampling of such documents.

With regard to Document Request Nos. 4 (which requests marketing plans for the SERVICEMASTER marks), 7 (which requests identification of prospective customers of services under the SERVICEMASTER marks), 8 (which requests information on marks considered confusingly similar to opposer's SERVICEMASTER marks), 14 (which requests information on the likelihood of public confusion), 17 (which requests information on the fame of opposer's marks), and 19 (which requests information on documents supporting the allegations of the notice of opposition not otherwise produced), the Board finds the requests to be relevant to the issue of likelihood of confusion. Moreover, the Board finds that opposer has not shown why such requests are overly broad and burdensome, or explained its representative sampling in such a way that applicant could determine whether the produced information was representative.

Applicant's motion to compel is granted with respect to Document Request Nos. 4, 7, 8, 14, 17, and 19. Opposer is allowed thirty days from the mailing date of this order to, without objection 1) produce all responsive information or 3) provide a representative sample of the responsive information

and enough information about the sample for applicant to determine if it is representative.

Document Request No. 1 (Second Set)

Produce samples of all forms of packaging, containers, tags, labels, flyers, advertisements, catalogs, brochures, decals, imprints and any other goods or materials bearing Mark(s) (other than Opposer's Mark) used by Opposer on or in connection with the provision of any HVAC and/or plumbing services and/or related goods.

Response:

Opposer objects to this request as irrelevant to claims or defenses of any party in this proceeding and as not reasonably calculated to lead to the discovery of admissible evidence.

The Request seeks samples of packaging and other materials bearing marks other than Opposer's marks. In support of its objection on the ground of relevance, Opposer states that this request is beyond the scope of the pleadings as it is not limited to the marks at issue therein. To the extent that this request is directed to materials bearing Opposer's Marks, Opposer refers to its previously produced print-outs from the www.servicemaster.com web site (SVM02 16-SVM0229) and various sample brochures used by Opposer in connection with the provision of Opposer's services (SVM0230-SVM0237; SVM0380-SVM0385; SVM03 86-S VM0387; SVM0388-SVM03 89; SVM0390-SVM0393; SVM0394-SVM0397;nSVM0398-SVM0399; SVM0400-SVM0523).

As has been stated, the information that a party sells the same goods or services as the propounding party, even if under a different mark, is relevant to the issue of likelihood of confusion.

Applicant's motion to compel is granted with respect to Document Request No. 1 (second set). Opposer is allowed thirty days from the mailing date of this order to, without objection 1) produce all responsive information or 3) provide a representative sample of the responsive information and enough

information about the sample for applicant to determine if it is representative.

OPPOSER'S MOTION FOR PROTECTIVE ORDER

On October 1, 2004, applicant served a notice of the taking of the deposition on October 28, 2004 of Ed Dunn, president of American Mechanical Services Company LLC (AMS). Opposer is the parent company to AMS and AMS uses the SERVICEMASTER marks under license. On receipt of the notice, opposer contacted applicant to offer opposer's Chief Marketing Office, Mitchell Engel, as a more knowledgeable witness. Applicant agreed to depose Mr. Engel but reserved the right to depose Mr. Dunn if Mr. Engel's testimony was insufficient. Opposer's motion for a protective order followed.

In support of its motion for a protective order, opposer argues that the deposition would not yield relevant evidence and, insofar as the information is available from others, is intended to harass one of opposer's top executives. Opposer also argues that, like disputed discovery requests relating to documents and information in possession of AMS, testimony regarding the use of marks by AMS is beyond the scope of this proceeding. In its opposition to the motion, applicant contends that opposer's rights to the mark are based in part on use by related companies such as AMS, that opposer has refused to

produce discovery regarding use of the mark or regarding HVAC and plumbing services by related companies, that the deposition of Mr. Engel was uninformative insofar as he admitted not being "intimately involved in AMS often"; and that the deposition of Mr. Dunn is relevant to issues involved in this proceeding.²

While a party may take the discovery deposition of "any person" under Fed. R. Civ. P. 30(a), the Board has the power to limit or bar a deposition if it determines that the discovery sought is obtainable from other sources that are more convenient and less burdensome or duplicative. See Fed. R. Civ. P. 26; *FMR Corp. v. Alliant Partners*, 51 USPQ2d 1759 (TTAB 1999). The party seeking a protective order bears the burden to show good cause therefor. To establish good cause, the movant must submit "a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *FMR Corp.*, *supra* at 1760 (citation omitted).

Here, as discussed earlier, we find that information regarding use of the SERVICEMASTER mark and regarding HVAC and plumbing services offered by companies related to opposer is directly relevant to the issue of likelihood of confusion to be

² Insofar as the Board's suspension order noted that previously noticed depositions should go forward, opposer's motion for a protective order was neither untimely nor filed in contravention of that order.

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decided here.³ Moreover, insofar as applicant did seek to obtain the information from the source opposer offered but was unsuccessful, applicant is reasonable in seeking the deposition of the AMS president regarding AMS' use of the mark and business of HVAC and plumbing services. In short, opposer has failed to show good cause for the requested protective order. Opposer's motion for a protective order is denied.

CONCLUSION

Except with respect to Interrogatory No. 6 (second set) which is denied, applicant's motion to compel is granted.

Opposer's motion for a protective order barring the deposition of Ed Dunn is denied.

Proceedings herein are resumed. Pursuant to the agreement of the parties, discovery and trial dates are reset as follows:

DISCOVERY	October 8, 2005
30-day testimony period for party in position of plaintiff to close:	January 6, 2006
30-day testimony period for party in position of defendant to close:	March 7, 2006
15-day rebuttal testimony period for plaintiff to close:	April 21, 2006

³ We disagree with opposer's contention that elimination of the dilution claim warrants restriction of such information.